IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 226 OF 2000.

Shri Vishwanath Yeshwant
Corbo, of major age,
residing at Pazwado, Bicholim,
Goa. ... Petitioner.

VERSUS

Smt. Nalini Apa Nipanikar,
of major age, residing at
Bairo Alto, Mapusa, Goa. ... Respondent.

Mr. Sudesh Usgaonkar, Advocate for the Petitioner.

Mr. Amrut Kansar, Advocate for the Respondent.

CORAM: V. C. DAGA, J.

DATE: 21ST JUNE, 2002.

ORAL JUDGMENT:

Heard parties.

2. There is no dispute between the parties that the appeal challenging the judgment and decree dated 10.6.1999 passed by the Civil Judge S.D., Bicholim, arising from the suit for cancellation of marriage ought to have been filed in the High Court. The said appeal has been wrongly presented in the District Court under a mistaken belief that the appeal would lie to the District Court. Labouring under the same mistaken belief, the applicant moved an application for condonation of delay. The learned II Addl. District Judge, Panaji, without considering the issue as to where

the appeal would lie proceeded to deal with the application seeking condonation of delay holding that it would be an exercise in futility and refused to condone the delay in filing appeal.

3. As a matter of fact, the learned II Addl. District Judge, Panaji, ought to have first considered and decided as to whether the appeal was maintainable in the District Court. If it was not so, then in that event it had no jurisdiction to decide the application seeking condonation of delay. The Memo of Appeal ought to have been returned to the appellant for presentation to the proper Court i.e. High Court. The period of limitation for filing appeal in the High Court being of 90 days, the appeal would have been well within time. In this view of the matter, it is prima facie clear that the impugned order suffers from non-application of mind and material irregularity and illegality and cannot stand to the scrutiny of law. The respondent has no objection to set side the impugned order in view of settled position of law that appeal could lie to this Court.

4. In the result the impugned order is quashed and set aside by consent of the parties. The II Addl. District Judge is directed to return the appeal for presentation to the proper Court. The appellant may

thereafter relodge the appeal along with the application for condonation of delay in a proper forum.

5. The Revision is allowed with no order as to costs.

(V. C. DAGA)
JUDGE.

sl.